

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of
Rules and Regulations Implementing the
Telephone Consumer Protection Act of 1991
CG Docket No. 02-278

NOTICE OF PROPOSED RULEMAKING

Adopted: October 1, 2020

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Comment Date: (15 days after date of publication in the Federal Register)
Reply Comment Date: (25 days after date of publication in the Federal Register)

By the Commission:

I. INTRODUCTION

1. The Telephone Consumer Protection Act of 1991 (TCPA) restricts certain calls to residential and wireless telephone numbers absent the prior express consent of the called party or an emergency purpose, but authorizes the Commission to exempt certain calls from these restrictions.1 The Pallone-Thune Telephone Robocall Abuse Criminal Enforcement and Deterrence Act (TRACED Act) directs the Commission to ensure that any exemption the Commission has granted under section 227(b)(2)(B) for calls to residential lines or under section 227(b)(2)(C) for calls to wireless numbers includes certain requirements.2

2. In this Notice of Proposed Rulemaking (NPRM), we propose measures to implement section 8 of the TRACED Act and seek comment on how we can best implement it. Specifically, as directed by the TRACED Act, we seek to ensure that any exemption adopted pursuant to sections 227(b)(2)(B) or (C) includes requirements with respect to: (1) the classes of parties that may make such calls; (2) the classes of parties that may be called; and (3) the number of such calls that may be made to a particular called party.3

3. As we implement section 8 of the TRACED Act, we seek to protect individual privacy interests without preventing calls consumers want. Accordingly, we seek comment on any conditions that are necessary to ensure that the existing exemptions for calls made to residential telephone lines satisfy section 8 and propose to allow residential consumers to opt out of any calls made pursuant to an exemption.

1 Telephone Consumer Protection Act of 1991, Pub. L. No. 102-243, 105 Stat. 2394 (1991), codified at 47 U.S.C. § 227.

2 Pallone-Thune Telephone Robocall Abuse Criminal Enforcement and Deterrence Act, Pub. L. No. 116-105, 133 Stat. 3274, § 8 (2019).

3 Id. § 8(a).

(continued....)

II. BACKGROUND

4. The TCPA prohibits initiating “any telephone call to any residential telephone line using an artificial or prerecorded voice to deliver a message without the prior express consent of the called party” unless a statutory exception applies or the call is “exempted by rule or order by the Commission under [section 227(b)(2)(B)].”⁴ The TCPA also prohibits, without the prior express consent of the called party, any call using an automatic telephone dialing system or an artificial or prerecorded voice to any telephone number “assigned to a paging service, cellular telephone service, specialized mobile radio service, or other radio common carrier service, or any service for which the called party is charged for the call” unless a statutory exception applies.⁵ In addition, in all but one instance artificial or prerecorded-voice messages (regardless of whether they fall into an exemption) must state clearly the identity of the business, individual, or other entity that is responsible for initiating the call at the beginning of the message.⁶ The message also must state clearly the telephone number (other than that of the autodialer or prerecorded message player that placed the call) of such business, other entity, or individual during or at the end of the message.⁷

5. Section 227(b)(2)(B) authorizes the Commission to adopt by rule or order exemptions from this ban for calls that are “not made for a commercial purpose” and for “such classes or categories of calls made for commercial purposes” that do not adversely affect the privacy rights of the called party and do not transmit an unsolicited advertisement.⁸ And section 227(b)(2)(C) authorizes the Commission to exempt from this provision, by rule or order, calls to a number assigned to a cellular service “that are not charged to the called party, subject to such conditions as the Commission may prescribe as necessary in the interests of the privacy rights.”⁹

6. The Commission has adopted exemptions pursuant to these statutory provisions. In 1992, the Commission exempted by rule artificial and prerecorded-voice calls to residential telephone lines that are not made for a commercial purpose and calls made for a commercial purpose that do not contain an unsolicited advertisement.¹⁰ In addition, the Commission concluded that tax-exempt nonprofit

⁴ See 47 U.S.C. § 227(b)(1)(B). The TCPA exempts from this prohibition calls for emergency purposes. *See id.*

⁵ *See id.* § 227(b)(1)(A)(iii).

⁶ 47 CFR § 64.1200(b)(1). In 2012, the Commission concluded by order that the Health Insurance Portability and Accountability Act of 1996’s (HIPAA’s) existing protections already safeguard consumer privacy, and therefore exempted prerecorded healthcare-related calls to residential lines subject to HIPAA from various TCPA requirements including the identification requirement. *See Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CG Docket No. 02-278, Report and Order, 27 FCC Rcd 1830, 1853-54, paras. 60-61 (2012) (*2012 TCPA Order*).

⁷ 47 CFR § 64.1200(b)(2).

⁸ 47 U.S.C. § 227(b)(2)(B).

⁹ *Id.* § 227(b)(2)(C).

¹⁰ *See Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CC Docket No. 92-90, Report and Order, 7 FCC Rcd 8752, 8773-74, paras. 40-41 (1992) (*1992 TCPA Order*) (noting that artificial or prerecorded-voice messages that do not seek to sell a product or service do not tread heavily upon the consumer interests implicated by the TCPA). The Commission also concluded that a solicitation to someone with whom a prior business relationship exists does not adversely affect subscriber privacy interests and adopted an exemption for artificial voice or prerecorded-voice messages delivered to consumers with whom the company has an established business relationship. The Commission subsequently eliminated that exemption and required companies to obtain prior express written consent before delivering artificial voice or prerecorded-voice telemarketing messages to their customers. *See 2012 TCPA Order*, 27 FCC Rcd at 1846-47, paras. 39-43. In 2012, the Commission amended the exemption for artificial and prerecorded-voice calls to residential lines to include any call “made for a commercial purpose but [that] does not include or introduce an advertisement or constitute telemarketing.” *See id.* at 1860, Appx. A.

(continued...)

organizations are exempt from the prohibition on artificial and prerecorded-voice message calls to residences as non-commercial calls.¹¹ In 2012, the Commission adopted by rule an exemption for Health Insurance Portability and Accountability Act of 1996 (HIPAA)-related calls that deliver “health care” messages as defined in HIPAA.¹² In 2014, the Commission created an exemption for package delivery companies to alert wireless consumers about package deliveries.¹³ And in 2015, the Commission created exemptions for financial services, inmate phone service providers, and certain healthcare callers subject to specific conditions.¹⁴ The Commission has also rejected varying requests for additional exemptions.¹⁵

7. Last year, Congress enacted the TRACED Act to further aid the Commission’s efforts in combating illegal robocalls.¹⁶ In relevant part, section 8 of the TRACED Act amends section 227(b)(2) of the Communications Act to require that the Commission ensure that any exemption granted under sections 227(b)(2)(B) or (C) allowing callers to make artificial voice, prerecorded voice, or autodialed calls without consent include certain conditions.¹⁷ Specifically, section 8 requires that any such exemption contain requirements with respect to: “(i) the classes of parties that may make such calls; (ii) the classes of parties that may be called; and (iii) the number of such calls that a calling party may make to a particular called party.”¹⁸

8. The TRACED Act directs the Commission to “prescribe such regulations or amend such existing regulations, as necessary to ensure that [any] such exemption [issued under sections 227(b)(2)(B) or (C)] contains each requirement [listed in section 8(a) of the TRACED Act]” no later than December 30, 2020.¹⁹ Further, section 8(b) states that “[t]o the extent such an exemption contains such a requirement before such date of enactment, nothing in this section or the amendments made by this section shall be construed to require the Commission to prescribe or amend regulations relating to such requirement.”²⁰

III. DISCUSSION

9. We initiate this proceeding to implement section 8 of the TRACED Act. Specifically, we seek comment on whether we need to amend the exemptions the Commission has previously carved out to comply with the TRACED Act. Those exemptions are: (1) non-commercial calls to a residence;

¹¹ 1992 TCPA Order, 7 FCC Rcd at 8773-74, para. 40.

¹² 2012 TCPA Order, 27 FCC Rcd at 1853-54, paras. 60-61.

¹³ Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991, CG Docket No. 02-278, Order, 29 FCC Rcd 3432, 3437-38, para. 19 (2014) (Cargo Airline).

¹⁴ See, e.g., Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991, CG Docket No. 02-278, WC Docket No. 07-135, Declaratory Ruling and Order, 30 FCC Rcd 7961, 7989, 8027-28, 8031-32, paras. 45-46, 138-39, 147-48 (2015) (2015 TCPA Declaratory Ruling).

¹⁵ See Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991, Anthem, Inc. Petition for Declaratory Ruling, CG Docket No. 02-278, Declaratory Ruling and Order, DA 20-669 (CGB June 25, 2020) (rejecting a request that we exempt certain non-emergency, healthcare-related calls that the petitioner claimed were “urgent”); Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991, Mortgage Bankers Association Petition for Exemption, CG Docket No. 02-278, Order, 31 FCC Rcd 12484 (CGB 2016) (rejecting a request to exempt mortgage service calls to wireless phone numbers).

¹⁶ See S. Report No. 116-41, 116th Cong., 1st Sess. 1-2 (2019) (stating that the purpose of the bill is to “aid the American public by helping to reduce illegal and unwanted robocalls” but also noting that not all robocalls are illegal and that “many important services are carried out via robocalls”).

¹⁷ TRACED Act, § 8(a).

¹⁸ *Id.*

¹⁹ *Id.* § 8(b).

²⁰ *Id.*

(2) commercial calls to a residence that do not constitute telemarketing; (3) tax-exempt nonprofit organization calls to a residence; (4) HIPAA-related calls to a residence; (5) package delivery-related calls to a wireless number; (6) financial-institution calls to a wireless number; (7) healthcare-related calls to a wireless number; (8) inmate calling service calls to a wireless number; and (9) cellular carrier calls to their own subscribers. We seek comment on these and any other issues that may allow us to implement section 8 of the TRACED Act.

10. As a preliminary matter, we note that the TCPA allows the Commission to exempt certain calls “by rule or order.”²¹ As a result, exemptions (5) through (8) from the list above have been adopted pursuant to Commission order, under section 227(b)(2)(C), but have not been codified in our rules. In order to promote ease and predictability for both callers and called parties as to these exemptions, and their concomitant limitations, we propose to codify all existing exemptions under section 227(b)(2)(C) in our rules. We seek comment on this proposal and our proposed codification of the exemptions in Appendix A.

11. *Non-Commercial Calls to a Residence.* The Commission has exempted calls “not made for a commercial purpose” from the prohibition on artificial or prerecorded-voice messages to residential telephone lines.²² This exemption does not appear to specify the “classes of parties that may make” such calls. The Commission has indicated, for example, that the exemption includes calls conducting research, market surveys, political polling, or similar activities.²³ The exemption does appear to specify the “classes of parties that may be called” because the exemption applies only to residential telephone lines.²⁴ And the exemption does not appear to limit the number of calls a calling party may make to a called party. The Commission has not limited the number of calls a calling party may make pursuant to this exemption, nor do the Commission’s rules require a caller to provide any means for a called party to opt out of such exempted calls. We seek comment on these views and whether the exemption remains in the public interest.

12. We seek comment on how to amend this rule as needed. Because this exemption is predicated on calls not being made for a commercial purpose, we propose to deem these classes of parties as “informational callers” that do not have a commercial purpose. Is this limitation sufficient to protect both callers availing themselves of the exemption as well as consumers receiving calls from such organizations? To implement section 8’s directive to adopt requirements with respect to the number of such calls that may be made to a particular called party, we seek comment on whether we should adopt a numerical limit on the number of calls that may be made to a called party under this exemption, or whether we should specify in our rules that a calling party shall not be limited in terms of the number of calls it makes under the exemption. If we adopt a limit, should we adopt an overall limit or instead a limit on the number of calls that may be made to a called party each week or month? Additionally, we propose to prohibit additional calls under this exemption after a called party has made an opt-out request to the calling party.

13. We note that our rules require that residential telephone subscribers be permitted to opt out of other, non-exempt calls.²⁵ Thus, a consumer who does not wish to receive further artificial or prerecorded-voice *telemarketing* calls can “opt out” of receiving such calls by dialing a telephone number (required to be provided in the prerecorded message) to register his or her do-not-call request in response

²¹ See 47 U.S.C. §§ 227(b)(1)(B), (C).

²² See 47 CFR § 64.1200(a)(3)(ii).

²³ See *1992 TCPA Order*, 7 FCC Rcd at 8774, para. 41.

²⁴ See 47 U.S.C. § 227(b)(1)(B); 47 CFR § 64.1200(a)(3).

²⁵ See, e.g., 47 CFR § 64.1200(b).

to that call.²⁶ In addition, our rules require that in every case where an artificial or prerecorded-voice telephone message includes or introduces an advertisement or constitutes telemarketing and is delivered to a residential telephone line, the caller must provide an automated, interactive voice- and/or key press-activated opt-out mechanism for the called person to make a do-not-call request.²⁷ Thus our proposal to allow residences to opt out of future calls for non-commercial purposes would bring this exemption into line with our treatment of other calls. To effectuate an opt-out mechanism, callers would have to comply with the requirements of section 64.1200(d) of our rules, which govern the process for handling do-not-call requests.²⁸ We seek comment on the potential burdens that these opt-out requirements could impose on those entities that make calls under this exemption, including comment on ways to minimize any such burdens. How long would it take to implement the requirements in section 64.1200(d) of our rules for those calls made pursuant to an exemption under section 227(b)(2)(B)? Would the time necessary for entities to honor opt-out requests vary according to the size of the calling entity? Are there ways to mitigate any such burdens on smaller entities? We also seek comment on the extent to which entities that make such artificial or prerecorded-voice calls for a non-commercial purpose may already offer, on a voluntary basis, an opt-out mechanism for those subscribers who request that they no longer be called.

14. *Commercial Calls to a Residence that Do Not Constitute Telemarketing.* The Commission has exempted calls “made for a commercial purpose but [that] do[] not include or introduce an advertisement or constitute telemarketing” from the prohibition on using an artificial or prerecorded-voice message to residential telephone lines.²⁹ This exemption does not appear to specify the “classes of parties that may make” such calls. The exemption does appear to specify the “classes of parties that may be called” because the exemption applies only to residential telephone lines. And the exemption does not appear to limit the number of calls a calling party may make to a called party. The Commission has not limited the number of calls a calling party may make pursuant to this exemption, nor do the Commission’s rules require a caller to provide any means for a called party to opt out of such exempted calls. We seek comment on these views and whether the exemption remains in the public interest.

15. We seek comment on how to amend this rule as needed. Because this exemption is predicated on calls not including an advertisement or constituting telemarketing, we propose to deem these classes of parties as “informational callers” to the extent they are only providing information or “transactional callers” that are calling to complete or confirm a commercial transaction with the called party. Is this limitation sufficient to protect both callers availing themselves of the exemption as well as consumers receiving calls from such organizations? To implement section 8’s directive to adopt requirements with respect to the number of such calls that may be made to a particular called party, we seek comment on whether we should adopt a numerical limit on the number of calls that may be made to a called party under this exemption, or whether we should specify in our rules that a calling party shall not be limited in terms of the number of calls it makes under the exemption. If we adopt a limit, should we adopt an overall limit or instead a limit on the number of calls that may be made to a called party each week or month? Additionally, we propose to prohibit additional calls under this exemption after a called party has made an opt-out request to the calling party. In that regard, we incorporate by reference the discussion above relating to the number of calls that can be made pursuant to the exemption for calls not made for a commercial purpose, including the proposed opt-out mechanism requirement, and invite similar comment in this context.³⁰

²⁶ *Id.* § 64.1200(b)(2).

²⁷ *Id.* § 64.1200(b)(3).

²⁸ *Id.* § 64.1200(d).

²⁹ *Id.* § 64.1200(a)(3)(iii).

³⁰ *See supra* paras. 12-13.

16. *Tax-exempt Nonprofit Organization Calls to a Residence.* The Commission has exempted calls made by or on behalf of a tax-exempt nonprofit organization from the prohibition on using an artificial or prerecorded voice to deliver a message to a residential telephone line.³¹ This exemption appears to specify the “classes of parties that may make” such calls (tax-exempt nonprofit organizations) as well as the “classes of parties that may be called” (calls only to residential telephone lines). But the exemption does not appear to limit the number of calls a calling party may make to a called party. The Commission has not limited the number of calls a calling party may make pursuant to this exemption, nor do the Commission’s rules require a caller to provide any means for a called party to opt out of such exempted calls. We seek comment on these views and whether the exemption remains in the public interest.

17. We seek comment on how to amend this rule as needed. To implement section 8’s directive to adopt requirements with respect to the number of such calls that may be made to a particular called party, we seek comment on whether we should adopt a numerical limit on the number of calls that may be made to a called party under this exemption, or whether we should specify in our rules that a calling party shall not be limited in terms of the number of calls it makes under the exemption. If we adopt a limit, should we adopt an overall limit or instead a limit on the number of calls that may be made to a called party each week or month? Additionally, we propose to prohibit additional calls under this exemption after a called party has made an opt-out request to the calling party. In that regard, we incorporate by reference the discussion above relating to the number of calls that can be made pursuant to the exemption for calls not made for a commercial purpose, including the proposed opt-out mechanism requirement, and invite similar comment in this context.³²

18. *HIPAA Calls to a Residence.* The Commission has exempted HIPAA-related calls that deliver a healthcare message from the prohibition on using an artificial or prerecorded voice to deliver a message to residential telephone lines.³³ This exemption appears to specify the “classes of parties that may make” such calls (calls “made by, or on behalf of, a ‘covered entity’ or its ‘business associate’ as those terms are defined in the HIPAA Privacy Rule, 45 CFR 160.103”³⁴) as well as the “classes of parties that may be called” (calls only to residential telephone lines). But the exemption does not appear to limit the number of calls a calling party may make to a called party. The Commission has not limited the number of calls a calling party may make pursuant to this exemption, nor do the Commission’s rules require a caller to provide any means for a called party to opt out of such exempted calls. We seek comment on these views and whether the exemption remains in the public interest.

19. We seek comment on how to amend this rule as needed. To implement section 8’s directive to adopt requirements with respect to the number of such calls that may be made to a particular called party, we seek comment on whether we should adopt a numerical limit on the number of calls that may be made to a called party under this exemption, or whether we should specify in our rules that a calling party shall not be limited in terms of the number of calls it makes under the exemption. If we adopt a limit, should we adopt an overall limit or instead a limit on the number of calls that may be made to a called party each week or month? Additionally, we propose to prohibit additional calls under this exemption after a called party has made an opt-out request to the calling party. In that regard, we incorporate by reference the discussion above relating to the number of calls that can be made pursuant to the exemption for calls not made for a commercial purpose, including the proposed opt-out mechanism requirement, and invite similar comment in this context.³⁵

³¹ See 47 CFR § 64.1200(a)(3)(iv).

³² See *supra* paras. 12-13.

³³ See 47 CFR § 64.1200(a)(3)(v).

³⁴ *Id.*

³⁵ See *supra* paras. 12-13.

20. *Package Delivery Calls to a Wireless Number.* The Commission has exempted package delivery calls to wireless consumers subject to several conditions.³⁶ These conditions appear to satisfy section 8 of the TRACED Act. Among other things, these conditions limit the class of calling parties (package delivery companies), the class of called parties (package recipients), and the number of calls (one notification for each package, with one additional notification for up to two follow-up attempts to obtain a recipient's signature if a signature is needed for delivery).³⁷ We seek comment on these views and whether the exemption remains in the public interest. We also seek comment on how to amend this rule to the extent needed to comply with section 8 of the TRACED Act.

21. *Financial Institution Calls to a Wireless Number.* The Commission has exempted calls made by financial institutions subject to similar conditions.³⁸ These conditions appear to satisfy section 8 of the TRACED Act. The exemption's conditions include limitations on the class of calling parties (financial institutions), the class of called parties (customers of the financial institution), and the number of calls (no more than three calls per event over a three-day period for each affected account).³⁹ We seek comment on these views and whether the exemption remains in the public interest. We also seek comment on how to amend this rule to the extent needed to comply with section 8 of the TRACED Act.

22. *Healthcare Provider Calls to a Wireless Number.* The Commission has exempted healthcare provider calls subject to several conditions.⁴⁰ These conditions appear to satisfy section 8 of the TRACED Act. They limit the class of calling parties (by or on behalf of a "covered entity" or its "business associate" as defined by HIPAA), the class of called parties (patients), and the number of calls (one message/call per day, up to a maximum of three voice calls or text messages combined per week). We seek comment on these views and whether the exemption remains in the public interest. We also seek comment on how to amend this rule to the extent needed to comply with section 8 of the TRACED Act.

23. *Inmate Calling Service Calls to a Wireless Number.* The Commission has exempted calls from inmate phone service providers subject to several conditions.⁴¹ These conditions appear to satisfy section 8 of the TRACED Act. They limit the class of calling parties (inmate collect call service providers), the class of called parties (wireless subscribers with whom the service provider needs to establish a billing arrangement for future inmate collect calls), and the number of calls (no more than three notifications following an unsuccessful collect call). We seek comment on these views and whether

³⁶ See *Cargo Airline*, 29 FCC Rcd at 3434-38, paras. 9-19. In addition to the conditions noted herein, additional conditions were imposed on package delivery calls as reflected in our proposed rules codifying this exemption. See Appx. A; see also *Cargo Airline*, 29 FCC Rcd at 3437-38, para. 18.

³⁷ *Id.* at 3437-38, para. 18 (limiting package delivery notifications to one notification (whether by voice call or text message) per package, except one additional notification is permitted for each of the following two attempts to obtain the recipient's signature when the signatory was not available to sign for the package on the previous delivery attempt).

³⁸ See *2015 TCPA Order*, 30 FCC Rcd at 7989, 8027-28, 8031-32, paras. 45-46, 138-39, 147-48. In addition to the conditions noted herein, additional conditions were imposed on financial institutions as reflected in our proposed rule codifying this exemption. See Appx. A; see also *2015 TCPA Order*, 30 FCC Rcd at 8027-28, para. 138.

³⁹ *Id.* at 8027-28, para. 138.

⁴⁰ *Id.* at 8031-32, para. 147. In addition to the conditions noted herein, additional conditions were imposed on HIPAA-related calls as reflected in our proposed rule codifying this exemption. See Appx. A; see also *2015 TCPA Order*, 30 FCC Rcd at 8031-32, para. 147. One such condition is that the voice call or text message "must not include any telemarketing, solicitation, or advertising" when made pursuant to the exemption.

⁴¹ *2015 TCPA Order*, 30 FCC Rcd at 7989, para. 45. In addition to the conditions noted herein, additional conditions were imposed on calls by inmate collect call service providers as reflected in our proposed rule codifying this exemption. See Appx. A; see also *2015 TCPA Order*, 30 FCC Rcd at 7989, para. 45.

the exemption remains in the public interest. We also seek comment on how to amend this rule to the extent needed to comply with section 8 of the TRACED Act.

24. *Cellular Carrier Calls to Subscribers.* In 1992, the Commission concluded that cellular carriers need not obtain “additional consent” from their subscribers prior to initiating autodialed or artificial or prerecorded-voice calls for which the cellular subscriber is not charged because such calls are not prohibited by section 227(b)(1)(A)(iii).⁴² Although the Commission did not take this action under section 227(b)(2)(C),⁴³ we take this opportunity to seek comment on whether it should be amended to be consistent with the intent of section 8 of the TRACED Act. This ruling limited the class of calling parties (cellular carrier) and the class of called parties (the cellular carrier’s own subscriber), but it does not appear to limit the number of calls a calling party may make to a called party beyond not charging the subscriber for the call. The Commission has not limited the number of calls a cellular carrier may make pursuant to this exemption, nor do the Commission’s rules require a cellular carrier to provide any means for a called party to opt out of such exempted calls. We seek comment on these views and whether the exemption remains in the public interest.

25. We seek comment on how to amend this exemption as needed. To implement section 8’s directive to adopt requirements with respect to the number of such calls that may be made to a particular called party, we seek comment on whether we should adopt a numerical limit on the number of calls that may be made to a called party under this exemption, or whether we should specify in our rules that a calling party shall not be limited in terms of the number of calls it makes under the exemption. If we adopt a limit, should we adopt an overall limit or instead a limit on the number of calls that may be made to a called party each week or month? Additionally, we propose to prohibit additional calls under this exemption after a called party has made an opt-out request to the calling party. In that regard, we incorporate by reference the discussion above relating to the number of calls that can be made pursuant to the exemption for calls not made for a commercial purpose, including the proposed opt-out mechanism requirement, and invite similar comment in this context.⁴⁴

IV. PROCEDURAL MATTERS

26. *Initial Paperwork Reduction Act of 1995 Analysis.* This Notice of Proposed Rulemaking may contain new or modified information collection(s) subject to the Paperwork Reduction Act of 1995.⁴⁵ If the Commission adopts any new or modified information collection requirements, they will be submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the PRA. OMB, the general public, and other federal agencies are invited to comment on the new or modified information collection requirements contained in this proceeding. In addition, pursuant to the Small Business Paperwork Relief Act of 2002,⁴⁶ we seek specific comment on how we might “further reduce the information collection burden for small business concerns with fewer than 25 employees.”⁴⁷

⁴² See *1992 TCPA Order*, 7 FCC Rcd at 8774, para. 45.

⁴³ Congress added the section 227(b)(2)(C) exemption provision to the statute only after the 1992 Commission ruling. See Telephone Disclosure and Dispute Resolution Act, Pub. L. No. 102-556, 106 Stat 4181 (1992). As a result, the ability of wireless carriers to call their own customers without additional consent, where the consumer is not charged for the call, is not a creation of a section 227(b)(2)(C) exemption.

⁴⁴ See *supra* paras. 12-13.

⁴⁵ Public Law 104-13.

⁴⁶ Public Law 107-198.

⁴⁷ 44 U.S.C. § 3506(c)(4).

27. *Initial Regulatory Flexibility Certification.* As required by the Regulatory Flexibility Act of 1980 (RFA),⁴⁸ the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) relating to this Notice of Proposed Rulemaking. The IRFA is contained in Appendix B.

28. *Ex Parte Presentations—Permit-But-Disclose.* This proceeding shall be treated as a “permit-but-disclose” proceeding in accordance with the Commission’s *ex parte* rules.⁴⁹ Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter’s written comments, memoranda, or other filing in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with section 1.1206(b) of the Commission’s rules. In proceedings governed by section 1.49(f) of the Commission’s rules or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (e.g., .doc, .xml, .ppt, searchable.pdf). Participants in this proceeding should familiarize themselves with the Commission’s *ex parte* rules.

29. *Comment Filing Instructions.* Pursuant to sections 1.415 and 1.419 of the Commission’s rules, 47 CFR §§ 1.415, 1.419, interested parties may file comments on or before the dates indicated on the first page of this document in CG Docket No. 02-278. Comments may be filed using the Commission’s Electronic Comment Filing System (ECFS).⁵⁰

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: <http://apps.fcc.gov/ecfs/>.
- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.
 - Filings can be sent by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission’s Secretary, Office of the Secretary, Federal Communications Commission.
 - Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.
 - U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW, Washington DC 20554.
 - Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID-19. See

⁴⁸ 5 U.S.C. § 603.

⁴⁹ 47 CFR §§ 1.1200 *et seq.*

⁵⁰ *Electronic Filing of Documents in Rulemaking Proceedings*, 63 Fed. Reg. 24121 (1998).

FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy, Public Notice, DA 20-304 (March 19, 2020), <https://www.fcc.gov/document/fcc-closes-headquarters-open-window-and-changes-hand-delivery-policy>.

30. *People with Disabilities.* To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer and Governmental Affairs Bureau at 202-418-0530 (voice).

31. *Availability of Documents.* Comments, reply comments, and *ex parte* submissions will be available via ECFS. Documents will be available electronically in ASCII, Microsoft Word, and/or Adobe Acrobat. When the FCC Headquarters reopens to the public, these documents will also be available for public inspection during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 12th Street, SW, CY-A257, Washington, D.C., 20554.

32. *Additional Information.* For additional information on this proceeding, contact Richard D. Smith, Richard.Smith@fcc.gov or (717) 338-2797, of the Consumer and Governmental Affairs Bureau, Consumer Policy Division.

V. ORDERING CLAUSES

33. Accordingly, **IT IS ORDERED**, pursuant to sections 4(i), 4(j), and 227 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 227, and section 8 of the Pallone-Thune Telephone Robocall Abuse Criminal Enforcement and Deterrence Act, Pub. L. 116-105, 133 Stat. 3274, that this *Notice of Proposed Rulemaking* is hereby **ADOPTED**.

34. **IT IS FURTHER ORDERED** that, pursuant to applicable procedures set forth in sections 1.415 and 1.419 of the Commission's Rules, 47 CFR §§ 1.415, 1.419, interested parties may file comments on the *Notice of Proposed Rulemaking* on or before 15 days after publication in the Federal Register, and reply comments on or before 25 days after publication in the Federal Register.

35. **IT IS FURTHER ORDERED** that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, **SHALL SEND** a copy of this *Notice of Proposed Rulemaking*, including the Initial Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

APPENDIX A

Draft Proposed Rules for Public Comment

The Federal Communications Commission proposes to amend Part 64 of Title 47 of the Code of Federal Regulations as follows:

PART 64 – MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

Subpart L – Restrictions on Telemarketing, Telephone Solicitation, and Facsimile Advertising

1. Section 64.1200(a)(1)(iv) is amended to read as follows:

§ 64.1200 Delivery Restrictions.

* * * * *

(a) * * *

(1) * * *

(iv) A person will not be liable for violating the prohibition in paragraph (a)(1)(iii) of this section when the call is placed to a wireless number that has been ported from wireline service and such call is a voice call; not knowingly made to a wireless number; and made within 15 days of the porting of the number from wireline to wireless service, provided the number is not already on the national do-not-call registry or caller's company-specific do-not-call list. A person will not be liable for violating the prohibition in paragraph (a)(1)(iii) of this section when making calls exempted by paragraph (a)(9) of this section.

* * * * *

2. Section 64.1200(a)(9) is added as follows:

(a)(9) *Exemptions.* A person will not be liable for violating the prohibition in paragraph (a)(1)(iii) of this section for making any call exempted in this subsection, provided that the call is not charged to the called person or counted against the called person's plan limits on minutes or texts. As used in this subsection, the term "call" includes a text message, including a short message service (SMS) call.

(i) Calls made by a package delivery company to notify a consumer about a package delivery, provided that all of the following conditions are met:

- A) the notification must be sent only to the telephone number for the package recipient;
- B) the notification must identify the name of the package delivery company and include contact information for the package delivery company;
- C) the notification must not include any telemarketing, solicitation, or advertising content;
- D) the voice call or text message notification must be concise, generally one minute or less in length for voice calls or 160 characters or less in length for text messages;
- E) the package delivery company shall send only one notification (whether by voice call or text message) per package, except that one additional notification may be sent for each attempt to

deliver the package, up to two attempts, if the recipient's signature is required for the package and the recipient was not available to sign for the package on the previous delivery attempt;

F) the package delivery company must offer package recipients the ability to opt out of receiving future delivery notification calls and messages and must honor an opt-out request within a reasonable time from the date such request is made, not to exceed thirty days; and,

G) each notification must include information on how to opt out of future delivery notifications; voice call notifications that could be answered by a live person must include an automated, interactive voice- and/or key press-activated opt-out mechanism that enables the called person to make an opt-out request prior to terminating the call; voice call notifications that could be answered by an answering machine or voice mail service must include a toll-free number that the consumer can call to opt out of future package delivery notifications; text notifications must include the ability for the recipient to opt out by replying "STOP."

(ii) Calls made by an inmate collect call service provider following an unsuccessful collect call to establish a billing arrangement with the called party to enable future collect calls, provided that all of the following conditions are met:

A) notifications must identify the name of the inmate collect call service provider and include contact information;

B) notifications must not include any telemarketing, solicitation, debt collection, or advertising content;

C) notifications must be clear and concise, generally one minute or less;

D) inmate collect call service providers shall send no more than three notifications following each inmate collect call that is unsuccessful due to the lack of an established billing arrangement, and shall not retain the called party's number after call completion or, in the alternative, after the third notification attempt; and

E) each notification call must include information on how to opt out of future calls; voice calls that could be answered by a live person must include an automated, interactive voice- and/or key press-activated opt-out mechanism that enables the called person to make an opt-out request prior to terminating the call; voice calls that could be answered by an answering machine or voice mail service must include a toll-free number that the consumer can call to opt out of future notification calls; and,

F) the inmate collect call service provider must honor opt-out requests immediately.

(iii) Calls made by any financial institution as defined in section 4(k) of the Bank Holding Company Act of 1956, 15 U.S.C. § 6809(3)(A), provided that all of the following conditions are met:

A) voice calls and text messages must be sent only to the wireless telephone number provided by the customer of the financial institution;

B) voice calls and text messages must state the name and contact information of the financial institution (for voice calls, these disclosures must be made at the beginning of the call);

C) voice calls and text messages are strictly limited to those for the following purposes: transactions and events that suggest a risk of fraud or identity theft; possible breaches of the security of customers' personal information; steps consumers can take to prevent or remedy harm caused by data security breaches; and actions needed to arrange for receipt of pending money transfers;

D) voice calls and text messages must not include any telemarketing, cross-marketing, solicitation, debt collection, or advertising content;

- E) voice calls and text messages must be concise, generally one minute or less in length for voice calls (unless more time is needed to obtain customer responses or answer customer questions) or 160 characters or less in length for text messages;
- F) a financial institution may initiate no more than three messages (whether by voice call or text message) per event over a three-day period for an affected account;
- G) a financial institution must offer recipients within each message an easy means to opt out of future such messages; voice calls that could be answered by a live person must include an automated, interactive voice- and/or key press-activated opt-out mechanism that enables the call recipient to make an opt-out request prior to terminating the call; voice calls that could be answered by an answering machine or voice mail service must include a toll-free number that the consumer can call to opt out of future calls; text messages must inform recipients of the ability to opt out by replying "STOP," which will be the exclusive means by which consumers may opt out of such messages; and,
- H) a financial institution must honor opt-out requests immediately.
- (iv) Calls made by healthcare providers, which include hospitals, emergency care centers, medical physician or service offices, poison control centers, and other healthcare professionals, provided that all of the following conditions are met:
- A) voice calls and text messages must be sent only to the wireless telephone number provided by the patient;
- B) voice calls and text messages must state the name and contact information of the healthcare provider (for voice calls, these disclosures would need to be made at the beginning of the call);
- C) voice calls and text messages are strictly limited to those for the following purposes: appointment and exam confirmations and reminders, wellness checkups, hospital pre-registration instructions, pre-operative instructions, lab results, post-discharge follow-up intended to prevent readmission, prescription notifications, and home healthcare instructions;
- D) voice calls and text messages must not include any telemarketing, solicitation, or advertising; may not include accounting, billing, debt-collection, or other financial content; and must comply with HIPAA privacy rules;
- E) voice calls and text messages must be concise, generally one minute or less in length for voice calls or 160 characters or less in length for text messages;
- F) a healthcare provider may initiate only one message (whether by voice call or text message) per day to each patient, up to a maximum of three voice calls or text messages combined per week to each patient;
- G) a healthcare provider must offer recipients within each message an easy means to opt out of future such messages; voice calls that could be answered by a live person must include an automated, interactive voice- and/or key press-activated opt-out mechanism that enables the call recipient to make an opt-out request prior to terminating the call; voice calls that could be answered by an answering machine or voice mail service must include a toll-free number that the consumer can call to opt out of future healthcare calls; text messages must inform recipients of the ability to opt out by replying "STOP," which will be the exclusive means by which consumers may opt out of such messages; and,
- H) a healthcare provider must honor opt-out requests immediately.

* * * * *

3. Sections 64.1200(b)(2) and (3) are amended to read as follows:

(b) * * *

(2) During or after the message, state clearly the telephone number (other than that of the autodialer or prerecorded message player that placed the call) of such business, other entity, or individual. The telephone number provided may not be a 900 number or any other number for which charges exceed local or long distance transmission charges. For telemarketing messages and messages made pursuant to an exemption under § 64.1200(a)(3)(ii)-(v) to residential telephone subscribers, such telephone number must permit any individual to make a do-not-call request during regular business hours; and

(3) In every case where the artificial or prerecorded-voice telephone message is made pursuant to an exemption under § 64.1200(a)(3)(ii)-(v) or includes or introduces an advertisement or constitutes telemarketing and is delivered to a residential telephone line or any of the lines or telephone numbers described in paragraphs (a)(1)(i) through (iii), provide an automated, interactive voice- and/or key press-activated opt-out mechanism for the called person to make a do-not-call request, including brief explanatory instructions on how to use such mechanism, within two (2) seconds of providing the identification information required in paragraph (b)(1) of this section. When the called person elects to opt out using such mechanism, the mechanism must automatically record the called person's number to the caller's do-not-call list and immediately terminate the call. When the artificial or prerecorded-voice telephone message is left on an answering machine or a voice mail service, such message must also provide a toll free number that enables the called person to call back at a later time and connect directly to the automated, interactive voice- and/or key press-activated opt-out mechanism and automatically record the called person's number to the caller's do-not-call list.

* * * * *

4. Sections 64.1200(d)(1) – (6) are amended to read as follows:

(d) No person or entity shall initiate any artificial or prerecorded-voice telephone call pursuant to an exemption under § 64.1200(a)(3)(ii)-(v) or any call for telemarketing purposes to a residential telephone subscriber unless such person or entity has instituted procedures for maintaining a list of persons who request not to receive such calls made by or on behalf of that person or entity. The procedures instituted must meet the following minimum standards:

(1) *Written policy.* Persons or entities making artificial or prerecorded-voice telephone calls pursuant to an exemption under § 64.1200(a)(3)(ii)-(v) or calls for telemarketing purposes must have a written policy, available upon demand, for maintaining a do-not-call list.

(2) *Training of personnel.* Personnel engaged in making artificial or prerecorded-voice telephone calls pursuant to an exemption under § 64.1200(a)(3)(ii)-(v) or who are engaged in any aspect of telemarketing must be informed and trained in the existence and use of the do-not-call list.

(3) *Recording, disclosure of do-not-call requests.* If a person or entity making an artificial or prerecorded-voice telephone call pursuant to an exemption under § 64.1200(a)(3)(ii)-(v) or any call for telemarketing purposes (or on whose behalf such a call is made) receives a request from a residential telephone subscriber not to receive calls from that person or entity, the person or entity must record the request and place the subscriber's name, if provided, and telephone number on the do-not-call list at the time the request is made. Persons or entities making such calls (or on whose behalf such calls are made) must honor a residential subscriber's do-not-call request within a reasonable time from the date such request is made. This period may not exceed thirty days from the date of such request. If such requests are recorded or maintained by a party other than the person or entity on whose behalf the call is made, the person or entity on whose behalf the call is made will be liable for any failures to honor the do-not-call request. A person or entity making an artificial or prerecorded-voice telephone call pursuant to an exemption under § 64.1200(a)(3)(ii)-(v) or any call for telemarketing purposes must obtain a consumer's prior express

permission to share or forward the consumer's request not to be called to a party other than the person or entity on whose behalf a call is made or an affiliated entity.

(4) *Identification of callers and telemarketers.* A person or entity making an artificial or prerecorded-voice telephone call pursuant to an exemption under § 64.1200(a)(3)(ii)-(v) or any call for telemarketing purposes must provide the called party with the name of the individual caller, the name of the person or entity on whose behalf the call is being made, and a telephone number or address at which the person or entity may be contacted. The telephone number provided may not be a 900 number or any other number for which charges exceed local or long distance transmission charges.

(5) *Affiliated persons or entities.* In the absence of a specific request by the subscriber to the contrary, a residential subscriber's do-not-call request shall apply to the particular entity making the call (or on whose behalf a call is made), and will not apply to affiliated entities unless the consumer reasonably would expect them to be included given the identification of the caller and (for telemarketing calls) the product being advertised.

(6) *Maintenance of do-not-call lists.* A person or entity making artificial or prerecorded-voice telephone calls pursuant to an exemption under § 64.1200(a)(3)(ii)-(v) or any call for telemarketing purposes must maintain a record of a consumer's request not to receive further calls. A do-not-call request must be honored for 5 years from the time the request is made.

* * * * *

5. Section 64.1200(d)(7) is deleted in its entirety.

* * * * *

APPENDIX B

Initial Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),¹ the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in this *Notice of Proposed Rulemaking* (NPRM). Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the NPRM provided on the first page of this document. The Commission will send a copy of the NPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.² In addition, the NPRM and IRFA (or summaries thereof) will be published in the Federal Register.³

A. Need for, and Objectives of, the Proposed Rules

2. The NPRM seeks comment on ways to implement section 8 of the Pallone-Thune Telephone Robocall Abuse Criminal Enforcement and Deterrence Act (TRACED Act), to ensure that any exemption adopted pursuant to sections 227(b)(2)(B) and (C) of the Telephone Consumer Protection Act of 1991 (TCPA) contains requirements with respect to: (1) the classes of parties that may make such calls; (2) the classes of parties that may be called; and (3) the number of such calls that may be made to a particular called party.⁴

3. The TRACED Act directs the Commission, no later than December 30, 2020, to “prescribe such regulations or amend such existing regulations, as necessary to ensure that [any] such exemption [issued under sections 227(b)(2)(B) or (C)] contains each requirement [listed in section 8(a) of the TRACED Act].”⁵ Section 8(b) of the TRACED Act provides that “[t]o the extent such an exemption contains such a requirement before such date of enactment, nothing in this section or the amendments made by this section shall be construed to require the Commission to prescribe or amend regulations relating to such requirement.”⁶

4. The NPRM seeks comment on how to implement the provisions of section 8 of the TRACED Act. It seeks comment on whether the conditions imposed by the Commission for exemptions issued by order under section 227(b)(2)(C) for calls to wireless numbers satisfy the TRACED Act’s section 8 requirements and that no further action is required other than to codify those exemptions in the rules. Thus, no additional rules or reporting and recordkeeping requirements are necessary, in that context. In addition, the NPRM seeks comment on any conditions that are necessary to ensure that the exemptions issued under section 227(b)(2)(B) for calls made to residential telephone lines satisfy the requirements of section 8 of the TRACED Act. To meet the statutory requirement, the NPRM proposes to amend the Commission’s rules to allow recipients of artificial and prerecorded-voice message calls made pursuant to any of the exemptions adopted under section 227(b)(2)(B) (including calls not made for a commercial purpose) to opt out of such calls. In so doing, the NPRM seeks to implement the requirements of the TRACED Act and the TCPA’s objective in balancing individual privacy interests

¹ 5 U.S.C. § 603. The RFA, *see* 5 U.S.C. § 601-612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

² 5 U.S.C. § 603(a).

³ *Id.*

⁴ NPRM at paras. 9-26; *see also* Pallone-Thune Telephone Robocall Abuse Criminal Enforcement and Deterrence Act, Pub. L. No. 116-105, 133 Stat. 3274 (2019) (TRACED Act); TRACED Act § 8; Telephone Consumer Protection Act of 1991, Pub. L. No. 102-243, 105 Stat. 2394 (1991) (codified at 47 U.S.C. § 227) (TCPA).

⁵ TRACED Act § 8(b).

⁶ *Id.*

with legitimate communications. The NPRM also seeks comment on ways to minimize any compliance burdens for both small and large entities that make calls pursuant to one of the exemptions in the law.

B. Legal Basis

5. The proposed rules are authorized under sections 4(i), 4(j), and 227 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 227, and section 8 of the Pallone-Thune Telephone Robocall Abuse Criminal Enforcement and Deterrence Act, Pub. L. No. 116-105, 133 Stat. 3274.

C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

6. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the rules adopted herein.⁷ The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.”⁸ In addition, the term “small business” has the same meaning as the term “small-business concern” under the Small Business Act.⁹ A “small-business concern” is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.¹⁰

7. *Small Businesses, Small Organizations, Small Governmental Jurisdictions.* Our actions, over time, may affect small entities that are not easily categorized at present. We therefore describe here, at the outset, three broad groups of small entities that could be directly affected herein.¹¹ First, there are industry-specific size standards for small businesses that are used in the regulatory context. These types of small businesses represent 99.9% of all businesses in the United States, which translates to flexibility analysis, according to data from the Small Business Administration’s (SBA) Office of Advocacy. In general, a small business is an independent business having fewer than 500 employees.¹² There are 30.7 million such businesses.¹³

8. Next, the type of small entity described as a “small organization” is generally “any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.”¹⁴ The Internal Revenue Service (IRS) uses a revenue benchmark of \$50,000 or less to delineate its annual electronic filing requirements for small exempt organizations.¹⁵ Nationwide, for tax year 2018, there

⁷ See 5 U.S.C. § 603(b)(3).

⁸ See *id.* § 601(6).

⁹ See *id.* § 601(3) (incorporating by reference the definition of “small-business concern” in the Small Business Act, 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies “unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register.”

¹⁰ See 15 U.S.C. § 632.

¹¹ See 5 U.S.C. § 601(3)-(6).

¹² See SBA, Office of Advocacy, “What’s New With Small Business?”, <https://cdn.advocacy.sba.gov/wp-content/uploads/2019/09/23172859/Whats-New-With-Small-Business-2019.pdf> (Sept 2019).

¹³ *Id.*

¹⁴ 5 U.S.C. § 601(4).

¹⁵ The IRS benchmark is similar to the population of less than 50,000 benchmark in 5 U.S.C § 601(5) that is used to define a small governmental jurisdiction. Therefore, the IRS benchmark has been used to estimate the number small organizations in this small entity description. See Annual Electronic Filing Requirement for Small Exempt Organizations — Form 990-N (e-Postcard), “Who must file,” <https://www.irs.gov/charities-non-profits/annual-electronic-filing-requirement-for-small-exempt-organizations-form-990-n-e-postcard>. We note that the IRS data

(continued....)

were approximately 571,709 small exempt organizations in the U.S. reporting revenues of \$50,000 or less according to the registration and tax data for exempt organizations available from the IRS.¹⁶

9. Finally, the small entity described as a “small governmental jurisdiction” is defined generally as “governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.”¹⁷ U.S. Census Bureau data from the 2017 Census of Governments¹⁸ indicate that there were 90,075 local governmental jurisdictions consisting of general purpose governments and special purpose governments in the United States.¹⁹ Of this number there were 36,931 general purpose governments (county²⁰, municipal and town or township²¹) with populations of less than 50,000 and 12,040 special purpose governments - independent school districts²² with enrollment populations of less than 50,000.²³ Accordingly, based on the 2017 U.S. Census of Governments data, we estimate that at least 48,971 entities fall into the category of “small governmental jurisdictions.”²⁴

does not provide information on whether a small exempt organization is independently owned and operated or dominant in its field.

¹⁶ See Exempt Organizations Business Master File Extract (EO BMF), "CSV Files by Region," <https://www.irs.gov/charities-non-profits/exempt-organizations-business-master-file-extract-ao-bmf>. The IRS Exempt Organization Business Master File (EO BMF) Extract provides information on all registered tax-exempt/non-profit organizations. The data utilized for purposes of this description was extracted from the IRS EO BMF data for Region 1-Northeast Area (76,886), Region 2-Mid-Atlantic and Great Lakes Areas (221,121), and Region 3-Gulf Coast and Pacific Coast Areas (273,702) which includes the continental U.S., Alaska, and Hawaii. This data does not include information for Puerto Rico.

¹⁷ 5 U.S.C. § 601(5).

¹⁸ See 13 U.S.C. § 161. The Census of Governments survey is conducted every five (5) years compiling data for years ending with “2” and “7”. See also Census of Governments, <https://www.census.gov/programs-surveys/cog/about.html>.

¹⁹ See U.S. Census Bureau, 2017 Census of Governments – Organization Table 2. Local Governments by Type and State: 2017 [CG1700ORG02]. <https://www.census.gov/data/tables/2017/econ/gus/2017-governments.html>. Local governmental jurisdictions are made up of general purpose governments (county, municipal and town or township) and special purpose governments (special districts and independent school districts). See also Table 2. CG1700ORG02 Table Notes_Local Governments by Type and State_2017.

²⁰ See *id.* at Table 5. County Governments by Population-Size Group and State: 2017 [CG1700ORG05]. <https://www.census.gov/data/tables/2017/econ/gus/2017-governments.html>. There were 2,105 county governments with populations less than 50,000. This category does not include subcounty (municipal and township) governments.

²¹ See *id.* at Table 6. Subcounty General-Purpose Governments by Population-Size Group and State: 2017 [CG1700ORG06]. <https://www.census.gov/data/tables/2017/econ/gus/2017-governments.html>. There were 18,729 municipal and 16,097 town and township governments with populations less than 50,000.

²² See *id.* at Table 10. Elementary and Secondary School Systems by Enrollment-Size Group and State: 2017 [CG1700ORG10]. <https://www.census.gov/data/tables/2017/econ/gus/2017-governments.html>. There were 12,040 independent school districts with enrollment populations less than 50,000. See also Table 4. Special-Purpose Local Governments by State Census Years 1942 to 2017 [CG1700ORG04], CG1700ORG04 Table Notes_Special Purpose Local Governments by State_Census Years 1942 to 2017.

²³ While the special purpose governments category also includes local special district governments, the 2017 Census of Governments data does not provide data aggregated based on population size for the special purpose governments category. Therefore, only data from independent school districts is included in the special purpose governments category.

²⁴ This total is derived from the sum of the number of general purpose governments (county, municipal and town or township) with populations of less than 50,000 (36,931) and the number of special purpose governments -

(continued....)

10. *Telemarketing Bureaus and Other Contact Centers.* This U.S. industry comprises establishments primarily engaged in operating call centers that initiate or receive communications for others—via telephone, facsimile, email, or other communication modes—for purposes such as (1) promoting clients’ products or services; (2) taking orders for clients; (3) soliciting contributions for a client; and (4) providing information or assistance regarding a client's products or services. These establishments do not own the product or provide the services they are representing on behalf of clients.²⁵ The SBA has determined that Telemarketing Bureaus and other Contact Centers with \$16.5 million or less in annual receipts qualify as small businesses.²⁶ U.S. Census data for 2012 indicate that 2,251 firms in this category operated throughout that year. Of those, 2,014 operated with annual receipts of less than \$10 million.²⁷ We conclude that a substantial majority of businesses in this category are small under the SBA standard.

11. *Wireless Telecommunications Carriers (except Satellite).* This industry comprises establishments engaged in operating and maintaining switching and transmission facilities to provide communications via the airwaves. Establishments in this industry have spectrum licenses and provide services using that spectrum, such as cellular services, paging services, wireless internet access, and wireless video services.²⁸ The appropriate size standard under SBA rules is that such a business is small if it has 1,500 or fewer employees.²⁹ For this industry, U.S. Census Bureau data for 2012 show that there were 967 firms that operated for the entire year.³⁰ Of this total, 955 firms employed fewer than 1,000 employees and 12 firms employed 1000 employees or more.³¹ Thus, under this category and the associated size standard, the Commission estimates that the majority of Wireless Telecommunications Carriers (except Satellite) are small entities.

12. *Wired Telecommunications Carriers.* The U.S. Census Bureau defines this industry as “establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired communications networks. Transmission facilities may be based on a single technology or a combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services, wired (cable) audio and video programming distribution, and wired broadband internet services. By exception, establishments providing satellite television distribution services using facilities

independent school districts with enrollment populations of less than 50,000 (12,040), from the 2017 Census of Governments - Organizations Tables 5, 6, and 10.

²⁵ U.S. Census Bureau, *2012 NAICS Definitions, 561422 Telemarketing Bureaus and Other Contact Centers*, <http://www.census.gov/cgi-bin/sssd/naics/naicsrch> (last visited July 6, 2016).

²⁶ 13 CFR § 121.201; 2012 NAICS code 561422.

²⁷ 2007 U.S. Economic Census, NAICS Code 561422, at http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2007_US_56SSSZ4&prodType=table.

²⁸ See U.S. Census Bureau, *2017 NAICS Definition, “517312 Wireless Telecommunications Carriers (except Satellite)”*, <https://www.census.gov/cgi-bin/sssd/naics/naicsrch?input=517312&search=2017+NAICS+Search&search=2017>.

²⁹ See 13 CFR § 121.201, NAICS Code 517312 (previously 517210).

³⁰ See U.S. Census Bureau, *2012 Economic Census of the United States*, Table ID: EC1251SSSZ5, *Information: Subject Series: Estab and Firm Size: Employment Size of Firms for the U.S.: 2012*, NAICS Code 517210, <https://data.census.gov/cedsci/table?text=EC1251SSSZ5&n=517210&tid=ECNSIZE2012.EC1251SSSZ5&hidePreview=false&vintage=2012>.

³¹ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard of employment of 1,500 or fewer employees.

(continued....)

and infrastructure that they operate are included in this industry.”³² The SBA has developed a small business size standard for Wired Telecommunications Carriers, which consists of all such companies having 1,500 or fewer employees.³³ U.S. Census Bureau data for 2012 show that there were 3,117 firms that operated that year.³⁴ Of this total, 3,083 operated with fewer than 1,000 employees.³⁵ Thus, under this size standard, the majority of firms in this industry can be considered small.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

13. As indicated above, the NPRM seeks comment on proposed rules to implement the TRACED Act in order to ensure that any exemptions adopted pursuant to sections 227(b)(2)(B) or (C) of the TCPA contain requirements with respect to: (1) the classes of parties that may make such calls; (2) the classes of parties that may be called; and (3) the number of such calls that may be made to a particular called party.³⁶ The NPRM generally does not propose specific limits on any existing exemptions in the rules and thus contains no specific reporting or recordkeeping requirements. The NPRM does, however, seek comment on requiring entities making artificial or prerecorded-voice calls to residential numbers pursuant to any of the exemptions adopted under section 227(b)(2)(B) to allow consumers to opt out of any future calls. In such cases, a caller may need to record and track such opt-out requests in order to avoid making any additional calls to certain consumers.

E. Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

14. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.³⁷

15. The NPRM specifically seeks comment on the timing necessary for entities that currently take advantage of exemptions from the TCPA to implement any new limitations the Commission might adopt on such exemptions. The NPRM considers, for example, different timing schedules for small and large entities subject to the TCPA rules. Specifically, the NPRM asks about the time necessary for entities to honor opt-out requests and whether that will vary according to the size of the entity. Finally, the NPRM seeks comment on different options available to entities to ensure they are complying with consumers’ desire not to be contacted. It asks whether a caller should simply be permitted to provide a telephone number for opting out or whether the caller should provide an automated voice-response mechanism during the call for doing so. The NPRM considers any compliance costs for small businesses if the proposed rules are adopted.

16. The Commission expects to consider the economic impact on small entities, as identified

³² See U.S. Census Bureau, *2017 NAICS Definition, “517311 Wired Telecommunications Carriers”*, <https://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=517311&search=2017>.

³³ See 13 CFR § 120.201, NAICS Code 517311 (previously 517110).

³⁴ See U.S. Census Bureau, *2012 Economic Census of the United States*, Table No. EC1251SSSZ5, *Information: Subject Series - Estab & Firm Size: Employment Size of Firms: 2012*. NAICS Code 517110. https://factfinder.census.gov/bkmk/table/1.0/en/ECN/2012_US/51SSSZ5//naics~517110.

³⁵ *Id.* The largest category provided by the census data is “1000 employees or more” and a more precise estimate for firms with fewer than 1,500 employees is not provided.

³⁶ TRACED Act § 8; 47 U.S.C. § 227.

³⁷ 5 U.S.C. § 603(c).

in comments filed in response to the NPRM and this IRFA, in reaching its final conclusions and taking action in this proceeding.

F. Federal Rules that May Duplicate, Overlap, or Conflict with the Proposed Rules

17. None.